

**EXHIBIT A**  
**to Declaration of Steve Loe**

Declaration by Steve Loe in support of Water Board for the Blue Triton (BT) Hearing

I Steve Loe, declare as follows:

1. I am a Yucaipa, California resident greatly affected by the unauthorized removal of water by Blue Triton (BT) from Strawberry Creek, Santa Ana River Watershed, in San Bernardino County. I will use the abbreviation BT to signify Blue Triton and its predecessors throughout this document. In some cases I will spell it out because Blue Triton shouldn't be blamed for sins conducted before their purchase even though they are now responsible as a corporation for what those past actions created. The unauthorized removal of public water results in increased need for and the cost of imported water for all residents of the San Bernardino Valley as well as significantly affecting the health of the environment and the plants and animals (including threatened and endangered species) that depend on surface and near surface moisture.

2. I would like to thank the Board for allowing the public to be involved. It has been very difficult for a common older, non-tech person to do all the legally accepted and must know stuff. I have had some medical and family issues that have made it difficult in addition to the process confusion and time consumption. Anyway thank you, and I hope I am able to upload this document to the ftp site. I will do my best and if it is not possible, I will send you a copy by e-mail and beg you to help me upload it.

3. Everything I say in this declaration is true to the best of my knowledge and is based on a huge amount of research and study of existing scientific knowledge, close interaction for many years with some of the best geologists, hydrologists, hydrogeologist and biologists in the management of aquatic and riparian habitats as affected by spring and groundwater removal, and 30 years experience with the Forest Service in the management of Strawberry Creek and the San Bernardino Mountains.

### **Background**

4. I am a retired fish and wildlife biologist that worked for the US Forest Service for 40 years as Forest Biologist and Resource Officer. I worked 30 years for the San Bernardino National Forest (Forest). My Primary responsibility was to help the Forest make sure that the projects and activities conducted on the Forest protected the fish and wildlife resources and a healthy environment for use and enjoyment of current and future generations. Another major emphasis of my job was helping the public and private industry use the Forest while protecting the NF resource values, with focus on fish and wildlife. The BT Special Use Permit for spring water removal infrastructure was a project which I worked on and had responsibility for some aspects of permit administration several different times in my career. I have continued to work worked with other agencies and groups studying and trying to restore the flora and fauna of the Strawberry Creek Watershed in my retirement. For a more detailed background on me and my ability and knowledge to talk on the subject of this hearing, please refer to the Story of Stuff expert witness testimony.

5. I served as the lead biologist for the Forest Service on the massive MWD Inland Feeder Project and Arrowhead Tunnel for a decade. This was the largest tunnel ever on the National Forest. The team included expert hydrologists, geologists, hydro-geologists and biologists from the Forest Service and MWD. Strawberry Creek was in the project area as it was considered to be potentially affected by tunnel inflows. Our team made an analysis in Strawberry Creek to make sure it wasn't being adversely impacted by tunnel groundwater inflows. During my time on the tunnel team, we learned that loss of spring flow and groundwater to the tunnel had a huge adverse impact to natural functioning of the springs and stream, even several miles downstream of the tunnel. The analysis of Strawberry Creek for tunnel impacts after working in adjacent streams for years was the first time I realized how dry upper Strawberry was in the summer months compared to other west slope San Bernardino Mountain

streams. After working in Sand Canyon, Borea Canyon, and Little Sand Canyon which are adjacent watersheds immediately south of the Strawberry Creek Watershed, I had a much greater understanding of coastal mountain streams and their hydrological, geological and biological relationships. Upper Strawberry Creek seemed to be much dryer in the summer and have less riparian vegetation for the size of the watershed than the others studied. With the Rowe historical measurements (Frye and Story of Stuff testimony in this case, and FS/Nestle studies, we now understand why. The lessons learned from the Arrowhead Tunnel Project and my knowledge of the watershed and permit give me a good background to comment on this case. My past work on Strawberry Creek and negotiations with Nestle and the Forest Service since 2014 also make my testimony relevant. I was part of the Forest Service staff that witnessed interactions with Nestle and the Forest Service permit.

6. I was assigned the lead by the Forest Service in cooperation with the Department of Fish and Game, Santa Ana Water Quality Control Board, and recreational homeowners association in process of the renewal of 800 Recreational Special Use Permits for their continued use of their cabins. Some of these cabin owners and their family's water use and water rights were as old as BT's claim to spring and stream water. I worked with 20 homeowner associations and over 800 residents to work out their use of water that would protect the stream and provide water for their continued use of their cabins. None of them were allowed to refuse to comply with streambed protection regulations, provision of in-stream flows, and County health standards, despite each using much less water that BT diverts. Some of the cabin owners were forced to have water hauled in from off-site (at huge expense), some only took water in the winter to make sure they did not affect summer flows. Some put in additional storage so they could take water only in winter when in excess to the stream and riparian needs. Getting the cabin owners, local, state, and federal agencies to agree on final permit approval was a major task and took a thorough understanding of springs, seeps, and streams, and the ability to defend required actions.. I brought in expert hydrologists and geologists where needed on complex situations. Protecting the

riparian and aquatic resources and meeting required laws, policies, and land management plan direction while providing water were the biggest issues for everyone involved.

7. During the controversy between Nestle, the Forest Service and the public over putting water back into the stream (2014-present), and during the height of negotiations with Nestle and the Forest Service, I was offered a job by ex-Forest Supervisor Gene Zimmerman who was now working for Nestle. I declined. However, the offer indicates to me that Nestle must have confidence in my credibility as a scientist and understanding of the Strawberry Creek situation. Between 2014 and 2016, I was involved in negotiations with Nestle Waters North America (BT's predecessor in interest) and the Forest Service, first with Nestle's Larry Lawrence and then with Gene Zimmerman. Gene Zimmerman was my boss when we both worked at the Forest Service, and he assigned me to the Tunnel Project and serving as the lead Province Wildlife Biologist in the re-writing of the Forest Plan.

**Is Blue Triton Violating the Prohibition Against Unauthorized Diversion or Use?**

8. I believe it is very clear that they are violating the prohibition against unauthorized diversion or use. Their claim of water rights based on the Del Rosa case is not valid, and it appears from the historical documents reviewed and entered into the record by Amanda Frye and the Story of Stuff, that Nestle and their predecessors knew all along that they didn't have the pre-1914 surface rights they were claiming. They used the Del Rosa case to falsely convince the Forest Service in 1929 that the case gave them the right to develop all of the springs in the Strawberry Creek watershed. They kept improving the tunnels and boreholes until the Forest Service hired biologists, hydrologists and geologists to comply with new environmental laws and do a better job protecting and managing the San Bernardino NF. In the 1980s and 1990s, BT predecessors asked to develop additional boreholes to the east of the spring 7 complex and make upgrades to the extraction and transport system. It was obvious to the team that reviewed the request for expansion to the east that the watershed could not stand additional water removal. It

has become clear with the work Amanda Frye has done tracking the history of BT and predecessors , that there is no clear chain of title to any water, especially spring water on the National Forest. The permit was issued by the FS was issued under false pretenses. It was based on the false claim of state recognized rights. Therefore, the original permit for the spring facilities and pipelines and right to enter NF were issued based on the lie and that lie continues today.

### **Should the State Water Board Issue a Cease and Desist Order?**

9. It is very important that the Water Board Issue a Cease and Desist order with significant penalties for noncompliance. BT has shown a disdain for and avoidance of any kind of oversight by government agencies. They have been deceptive in their FS permitting, F+WL permitting, FDA permitting, and the public dialog about their rights and operations. They have threatened to file suit if the Forest Service or the State Board attempts to restrict their take. Even though they were told to get Streambed alteration permits for their operations in the Forest Service Special Use Permit ,they have told the F+WL that they don't need Streambed Alteration Agreements because they are not damaging any stream since it is all stable and there is no stream or spring any longer to damage. That's the same argument as "we have totally captured all the spring water and contributing groundwater, so it is all groundwater and not under Board jurisdiction". They have told the FS since 1929 that they had absolute, pre-1914 surface state water rights to any springs in the Strawberry Creek Watershed. They told FDA that they are only taking spring water. They have told the public through slick PR and advertising that shows bubbling springs with large flows, how they only take water that naturally flows to the surface. And yet in these proceedings, they have and are still arguing that they are really taking groundwater of which the Board has no control. BT has been deceptive in their reporting to avoid being found in violation of their actual rights. While telling the Forest Service they were taking surface spring water to which they had an

absolute state right, they were reporting it to the State as groundwater rather than surface water. They knew all along they didn't have rights or they would have filed as surface diversions, not groundwater wells.

10. In order to keep the Forest Service Staff and the public from digging into their claims of rights to all the water they were removing from springs and groundwater, in 1994 they had their lawyers make sure that the well information (depth, yield) was marked as Privileged and Confidential by the Forest Service, kept in a separate file, and not available to the staff or the public. Their reason argued by BT was "trade secrets". FS staff never agreed with this decision, but staff were not able to get support from above to challenge this until 2003 when a FS-wide decision was being made to finally address the 15 year expired permit. There was no way the FS could analyze the impacts without that information. The information was then made available, only to the FS analysis team, but the order was to not share with the public due to "trade secrets". The analysis and planning to deal with the expired permit and bring it into compliance with laws and policies started internally in 2003. A high powered team was convened with representatives from the Washington and Regional Office as well as the Forest to see what was needed to renew the permit. The team came up with the outline of a plan to require monitoring and studies to enable completing the NEPA process and determine if and how the use should continue. It was never officially started until 2015, due to shifting Forest Supervisor Zimmerman and thus Forest priorities. It took a huge nation-wide public outcry, nation-wide press coverage, and an FBI investigation to get the Forest Service and Nestle to agree to start the National Environmental Policy Act process for reviewing and bringing the permit into compliance. That is an indicator of the kind of influence Nestle had over the Forest Service. Supervisor Zimmerman was hired by Nestle after retirement to sell how environmentally concerned they were. He did PR films in the spring using National Forest habitats that are inaccessible to the public to show how good the stream looked, wrote Op E.Ds. for local newspapers touting the environmental record of Nestle and how the permit was good for the land, and he negotiated with me

regarding the drought and continued, unabated removal of huge amounts of spring and groundwater. Ann Veneman, who was the Secretary of Agriculture (in charge of the Forest Service) during the time when the expired permit was allowed to continue, was placed on the International Board for Nestle. They have been very successful and building support at the top of the government. This project has been no exception.

11. Blue Triton's predecessors have been able avoid any control by government agencies through deception, threats, bullying and influence peddling. This must stop. It is time for the FS and State Board to stand up to Blue Triton and make them be totally transparent and comply with laws and regulations in their take of public water. BT argues that the Board should not exert control, but allow the FS to continue to implement the current Adaptive Management Plan. This adaptive management plan developed by BT and the FS under duress with BT threatening to file suit if there was any reduction in their ability to take "their" water. The Forest Service was still believing the "lie" on water rights and weren't willing to stop the take of water for some time to determine what was happening and let the groundwater and stream recover. They accepted that Nestle had the water rights, and Nestle refused to stop the take to establish a baseline.

12. The taking of all the spring water and large amounts of groundwater is having a significant adverse effect on the proper functioning of the stream. Much of the area that had perennial flows before the Springs were developed are now dry and intermittent at best. A stream is not a stream if there is no water or no life. Bottles are not where Strawberry Creek should be. I am pleased that the Board is holding BT accountable.

**What Provisions Should be in the Cease and Desist Order?**



13. The Cease and Desist Order should immediately stop any removal of water from Strawberry Creek. It should require historical surface flows at all tapped springs be released to the stream, and leave the rest to recharge the groundwater. The Rowe field notes reports, and letters (provided by Amanda Frye and the Water Resource Institute), paint a very clear picture of how wet the spring sites and stream were before the springs were completely destroyed and groundwater severely depleted. The stream has been categorized by Robert Taylor and the Forest Service as Impaired and at risk due to the removal of so much water by BT, and the effect on spring and stream flows. BT should be required to restore the spring and stream flows that were measured by Rowe and estimated to be the natural flows by Bearmar and Taylor in their FS NEPA evaluation of whether and how to continue the permit for BT. Any right to surface flows, or springs should require a point of diversion where the landowner is fully informed of the actual rights. It should be at the base of the mountain (like the original springs) to avoid dewatering Strawberry Creek and adversely affecting public land and resources on the National Forest. Using false claims to develop and destroy springs should not give the perpetrator the right to continue and gain from the lie.

#### **Site Visit Recommendations**

14. At the zoom meeting yesterday, 12/16, you suggested that if we had significant hearing related site visits that would help you understand the complete infrastructure and potentially affected Strawberry Creek watershed features, to put that in our testimony. Here are my thoughts and suggestions:

- I have submitted an e-mail to your office and to all the parties on the mailing list of a rough map and description for the suggested stops. I understand the interest in seeing the historic hotel, but from what I heard you say, looking at BT infrastructure, operation on the mountain and at bottom and watershed condition/features. Based on what I think you said you wanted to see, these seem to fit. We will be right there for most of these sites, so a couple of hours of quality

learning for all with very little hiking could be accomplished. After these stops the understanding of those involved would be greatly enhanced. These are the areas we always took FS staff to show them Strawberry Creek so they would understand the management situation.

- **Strawberry Creek Crossing of Forest Road 1N24.** This is a spot that should still be drivable from the Hotel. It will give a good view of the stream and watershed characteristics below the confluence of the East and West Fork, which is much different than the headwater spring area.
- **Coldwater Canyon/Strawberry Confluence.** This is a very important stream reach on Strawberry Creek. It has been the site of considerable work by the Forest Service and Fish and Wildlife and was visited often for monitoring and study. It was always a field trip stop to educate new staff. Coldwater Canyon and its springs and stream flows are a big part of the history related to the water rights.
- **Expired Forest Service Permit in Coldwater Canyon.** Historically, Coldwater Canyon was very important to the early water withdrawal and establishment of early water rights which BT says has been moved to NF headwater springs. You can drive almost to the FS permitted collection site. I believe it was put in to capture early developed spring water in more recent years. It may have potential to provide BT their final legal spring water after the Board makes their decision.
- **East Twin Creek Crossing of 40<sup>th</sup> Street.** This stop would show the stream where the West Fork and East Fork (Strawberry and Coldwater combined) reach the recharge basins. A good spot for SBVMWD to discuss the importance of San Bernardino Mountains and headwaters for domestic water supply.

I declare under penalty of perjury to the laws of the State of California that the foregoing is true

and correct.

Executed December 17, 2021, at Yucaipa, California.

Steve Loe